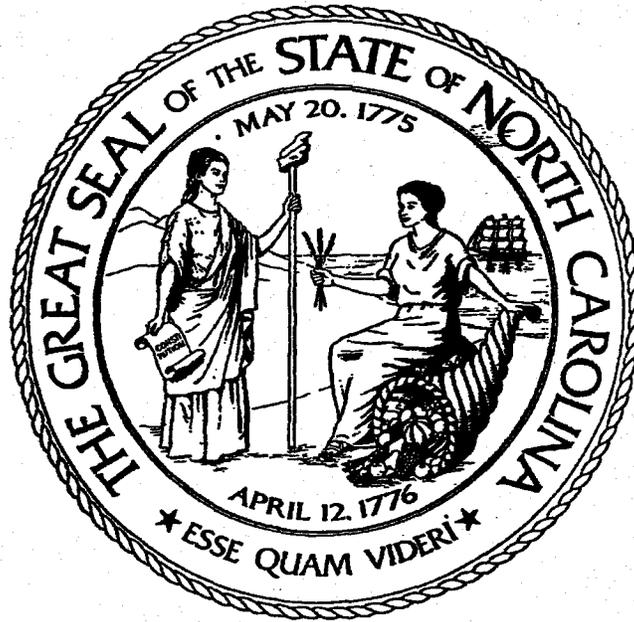


**JOINT LEGISLATIVE COMMISSION
ON MUNICIPAL INCORPORATIONS**



**REPORT TO THE
GENERAL ASSEMBLY
OF NORTH CAROLINA
Proposed Town of Oak Level
February 9, 2009**

REPORT TO THE GENERAL ASSEMBLY

Proposed Incorporation of the Town of Oak Level February 9, 2009

The Joint Legislative Commission on Municipal Incorporations was created in 1986 by the General Assembly to conduct an independent review and evaluation of proposed municipal incorporations. This evaluation, to be conducted in accordance with a statutory set of objective criteria, is designed to allow the General Assembly to see the feasibility of the proposed new municipality. The Commission consists of four members of the General Assembly, one city official, and one county official. A list of members appears as Appendix A.

The statutory criteria require a review of community support, (a petition is required) population, land development, nearness to other urban areas, and ability to provide municipal services at a reasonable tax rate. A copy of the statutes authorizing the Commission and setting up the review standards is attached as Appendix B.

The Commission received a petition proposing the incorporation of the Town of Oak Level in Nash County on December 3, 2008. A copy of the petition is attached as Appendix C.

The Commission, pursuant to G.S. 120-161, asked the Division of Community Assistance of the Department of Commerce to evaluate the petition. The Division conducted the evaluation and, based upon its report, the Commission found that the requirements of G.S. 120-163 and G.S. 120-164 had been met (a copy of the report is attached as Appendix D).

The Commission also requested that the Division of Community Assistance evaluate the proposed Town's petition for incorporation under G.S. 120-166 (a copy of the report is attached as Appendix E). The Division conducted the evaluation and determined that because the City of Rocky Mount is located within 4 miles of the boundaries of the proposed Town and has a population of 56,288, the proposed Town must obtain a resolution from the City of Rocky Mount expressly approving the incorporation of the proposed Town. The proposed Town has not obtained a resolution expressly approving incorporation from the City of Rocky Mount. However, the City of Rocky Mount adopted a resolution expressing its opposition to the proposed incorporation.

On February 9, 2009, the Commission met to discuss the Oak Level petition. The Commission determined that because the City of Rocky Mount had expressed its opposition to the proposed incorporation and would not adopt a resolution in support as required by G.S. 120-166, the Commission was

prohibited from making a positive recommendation to the General Assembly for the incorporation of the proposed Town of Oak Level. Therefore, the Commission decided against authorizing further studies of the petition and voted unanimously in favor of giving the petition a negative recommendation.

The Commission finds that the proposed Town of Oak Level does not meet the standards required by Article 20 of Chapter 120 of the General Statutes, and therefore the Commission does not recommend incorporation of the area as the Town of Oak Level.

APPENDIX A

**JOINT LEGISLATIVE COMMISSION ON
MUNICIPAL INCORPORATIONS
2008-2010
Membership**

President Pro Tem's Appointments

Senator Fletcher Hartsell
P. O. Box 368
Concord, NC 28026-0368

Senator Vernon Malone
2124 Lyndhurst Dr.
Raleigh, NC 27610

Mr. Steven Raper
P. O. Box 1180
Rocky Mount, NC 27802-1180
(252) 972-1325

Staff

Gayle L. Moses, Staff Attorney
Bill Drafting Division

Oliver Bass
Dept of Commerce, Division of
Community Assistance
733-2853

Lee Nichols
Dept of Commerce, Division of
Community Assistance
733-2853

Speaker's Appointments

Representative Becky Carney
P. O. Box 32873
Charlotte, NC 28232

Representative William Wainwright
P. O. Box 941
Havelock, NC 28532

Mr. Mike Cross
Chatham County Commissioner
388 Cross Point Road
New Hill, NC 27562

Legislative Assistant

Delta Prince
2125 Legislature Building
Raleigh, NC
919-733-5649

APPENDIX B

Article 20.

Joint Legislative Commission on Municipal Incorporations.

Part 1. Organization.

§ 120-158. Creation of Commission.

(a) There is created the Joint Legislative Commission on Municipal Incorporations, referred to in this Article as "Commission".

(b) The Commission shall consist of six members, appointed as follows:

- (1) Two Senators appointed by the President Pro Tempore of the Senate;
- (2) Two House members appointed by the Speaker;
- (3) One city manager or elected city official, appointed by the President Pro Tempore of the Senate from a list of three eligible persons nominated by the North Carolina League of Municipalities; and
- (4) One county commissioner or county manager, appointed by the Speaker from a list of three eligible persons nominated by the North Carolina Association of County Commissioners. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1991, c. 739, s. 17.)

§ 120-159. Terms.

Members shall be appointed for terms ending June 30, 1987, and subsequently for two-year terms beginning July 1, 1987, and biennially thereafter. A member eligible when appointed may continue for the remainder of the term regardless of the member's continued eligibility for the category. The Commission shall elect a chairman from its membership for a one-year term. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-160. Compensation.

Members of the Commission who are members of the General Assembly shall receive subsistence and travel allowances as provided by G.S. 120-3.1. Members who are State officers or employees shall receive subsistence and travel allowances as provided by G.S. 138-6. All other members shall receive per diem, subsistence, and travel allowances as provided by G.S. 138-5. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-161. Facilities and staff.

The Commission may meet in the Legislative Building or the Legislative Office Building. Staff for the Commission shall be provided by the Legislative Services Commission. The Commission may contract with the Institute of Government, the Local Government Commission, the Department of Environment and Natural Resources, or other agencies as may be necessary in completing any required studies, within the funds appropriated to the Commission. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1989, c. 727, s. 218(82); 1997-443, s. 11A.119(a).)

§ 120-162. Reserved for future codification purposes.

Part 2. Procedure for Incorporation Review.

§ 120-163. Petition.

(a) The process of seeking the recommendation of the Commission is commenced by filing with the Commission a petition signed by fifteen percent (15%) of the registered voters of the area proposed to be incorporated, but by not less than 25 registered voters of that area, asking for incorporation. The voter shall sign the petition and also clearly print that voter's name adjacent to the signature. The petition must also contain the voter's residence address and date of birth.

(b) The petition must be verified by the county board of elections of the county where the voter is alleged to be registered. The board of elections shall cause to be examined the signature, shall place a check mark beside the name of each signer who is qualified and registered to vote in that county in the area proposed to be incorporated, and shall attach to the petition a certificate stating the number of voters registered in that county in the area proposed to be incorporated, and the total number of registered voters who have been verified. The county board of elections shall return the petition to the person who presented it within 15 working days of receipt. That period of 15 working days shall be tolled for any period of time that is also either two weeks before or one week after a primary or election being conducted by the county board of elections.

(c) The petition must include a proposed name for the city, a map of the city, a list of proposed services to be provided by the proposed municipality, the names of three persons to serve as interim governing board, a proposed charter, a statement of the estimated population, assessed valuation, degree of development, population density, and recommendations as to the form of government and manner of election. The petition must contain a statement that the proposed municipality will have a budget ordinance with an ad valorem tax levy of at least five cents (5¢) on the one hundred dollar (\$100.00) valuation upon all taxable property within its corporate limits. The petition must contain a statement that the proposed municipality will offer four of the following services no later than the first day of the third fiscal year following the effective date of the incorporation: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning. In order to qualify for providing police protection, the proposed municipality must propose either to provide police service or to have services provided by contract with a county or another municipality that proposes that the other government be compensated for providing supplemental protection. The proposed municipality may not contain any noncontiguous areas.

(d) The petitioners must present to the Commission the verified petition from the county board of elections.

(e) A petition must be submitted to the Commission at least 60 days prior to convening of the next regular session of the General Assembly in order for the Commission to make a recommendation to that session. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1999-458, s. 1; 2001-353, s. 6.)

§ 120-164. Notification.

(a) Not later than five days before submitting the petition to the Commission, the petitioners shall notify:

- (1) The board or boards of county commissioners of the county or counties where the proposed municipality is located;
- (2) All cities within that county or counties; and
- (3) All cities in any other county that are within five miles of the proposed municipality of the intent to present the petition to the Commission.

(b) The petitioners shall also publish, one per week for two consecutive weeks, with the second publication no later than seven days before submitting the petition to the Commission, notice in a newspaper of general circulation in the area proposed to be incorporated of the intent to present the petition to the Commission. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-165. Initial inquiry.

(a) The Commission shall, upon receipt of the petition, determine if the requirements of G.S. 120-163 and G.S. 120-164 have been met. If it determines that those requirements have not been met, it shall return the petition to the petitioners. The Commission shall also publish in the North Carolina Register notice that it has received the petition.

(b) If it determines that those requirements have been met, it shall conduct further inquiry as provided by this Part. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-166. Additional criteria; nearness to another municipality.

(a) The Commission may not make a positive recommendation if the proposed municipality is located within one mile of a municipality of 5,000 to 9,999, within three miles of a municipality of 10,000 to 24,999, within four miles of a municipality of 25,000 to 49,999, or within five miles of a municipality of 50,000 or over, according to the most recent decennial federal census, or according to the most recent annual estimate of the Office of State Budget and Management if the municipality was incorporated since the return of that census. For purposes of this section, "municipality" means a city as defined by G.S. 160A-1(2) or a county that has exercised its authority under Article 24 of Chapter 153A of the General Statutes.

(b) Subsection (a) of this section does not apply in the case of proximity to a specific municipality if:

- (1) The proposed municipality is entirely on an island that the nearby city is not on;
- (2) The proposed municipality is separated by a major river or other natural barrier from the nearby city, such that provision of municipal services by the nearby city to the proposed municipality is infeasible or the cost is prohibitive, and the Commission shall adopt policies to implement this subdivision;
- (3) The municipalities within the distances described in subsection (a) of this section by resolution express their approval of the incorporation; or
- (4) An area of at least fifty percent (50%) of the proposed municipality has petitioned for annexation to the nearby city under G.S. 160A-31 within the previous 12 months before the incorporation petition is submitted to the Commission but the annexation petition was not approved. (1985

(Reg. Sess., 1986), c. 1003, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 25; 1998-150, s. 2; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2005-35, s. 2.)

§ 120-167. Additional criteria; population.

The Commission may not make a positive recommendation unless the proposed municipality has a permanent population of at least 100 and a population density (either permanent or seasonal) of at least 250 persons per square mile. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1999-458, s. 2.)

§ 120-168. Additional criteria; development.

The Commission may not make a positive recommendation unless forty percent (40%) of the area is developed for residential, commercial, industrial, institutional, or governmental uses, or is dedicated as open space under the provisions of a zoning ordinance, subdivision ordinance, conditional or special use permit, or recorded restrictive covenants. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1999-458, s. 3.)

§ 120-169. Additional criteria; area unincorporated.

The Commission may not make a positive recommendation if any of the proposed municipality is included within the boundary of another incorporated municipality, as defined by G.S. 153A-1(1), or if any of the proposed municipality is included within the boundary of a county that has exercised its authority under Article 24 of Chapter 153A of the General Statutes. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 2005-35, s. 3.)

§ 120-169.1. Additional criteria; level of development, services; financial impact on other local governments.

(a) Repealed by Session Laws 1999-458, s. 4.

(b) Services. – The Commission may not make a positive recommendation unless the area to be incorporated submits a plan for providing a reasonable level of municipal services. This plan shall be based on the proposed services stated in the petition under G.S. 120-163(c).

(c) The Commission in its report shall indicate the impact on other municipalities and counties of diversion of already levied local taxes or State-shared revenues from existing local governments to support services in the proposed municipality. (1998-150, s. 3; 1999-458, s. 4.)

§ 120-170. Findings as to services.

The Commission may not make a positive recommendation unless it finds that the proposed municipality can provide at a reasonable tax rate the services requested by the petition, and finds that the proposed municipality can provide at a reasonable tax rate the types of services usually provided by similar municipalities. In making findings under this section, the Commission shall take into account municipal services already being provided. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-171. Procedures if findings made.

(a) If the Commission finds that it may not make a positive recommendation because of the provisions of G.S. 120-166 through G.S. 120-170, it shall make a negative recommendation to the General Assembly. The report to the General Assembly shall list the grounds on which a negative recommendation is made, along with specific findings.

If a negative recommendation is made, the Commission shall notify the petitioners of the need for a legally sufficient description of the proposed municipality if the proposal is to be considered by the General Assembly. At the request of a majority of the members of the interim board named in the petition, the Commission may conduct a public hearing and forward any comments or findings made as a result of that hearing along with the negative recommendation.

(b) If the Commission determines that it will not be barred from making a positive recommendation by G.S. 120-166 through G.S. 120-170, it shall require that petitioners have a legally sufficient description of the proposed municipality prepared at their expense as a condition of a positive recommendation.

(c) If the Commission determines that it is not barred from making a positive recommendation, it shall make a positive recommendation to the General Assembly for incorporation.

(d) The report of the Commission on a petition shall be in a form determined by the Commission to be useful to the General Assembly. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-172. Referendum.

Based on information received at the public hearing, the Commission may recommend that any incorporation act passed by the General Assembly shall be submitted to a referendum, except if the petition contained the signatures of fifty percent (50%) of registered voters the Commission shall not recommend a referendum. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-173. Modification of petition.

With the agreement of the majority of the persons designated by the petition as an interim governing board, the Commission may submit to the General Assembly recommendations based on deletion of areas from the petition, as long as there are no noncontiguous areas. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§ 120-174. Deadline for recommendations.

If the petition is timely received under G.S. 120-163(e), the Commission shall make its recommendation to the General Assembly no later than 60 days after convening of the next regular session after submission of the petition. (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

§§ 120-175 through 120-179. Reserved for future codification purposes.

STATE OF NORTH CAROLINA
General Assembly
Joint Legislative Commission On Municipal Corporations

In the Matter of the Application For)	
Incorporation Of The Town Of)	PETITION SEEKING CORPORATION
Oak Level, Nash County,)	PURSUANT TO GENERAL STATUTES
North Carolina,)	SECTION 120-163

We, the undersigned Petitioners, representing at least fifteen percent (15%) of the registered voters of the area proposed to be incorporated as the "Town of Oak Level", state as follows:

1. The Petitioners propose, and seek to incorporate, the area indicated on the map submitted with this Petition as Exhibit A, to be known as the "Town of Oak Level," situated in Nash County, North Carolina.

2. Petitioners propose that, if incorporated, the Town of Oak Level will provide fire protection services via contract with the Town of Nashville, police protection services via contract with the Nash County Sheriff, solid waste collection services via contract with a private enterprise, administrative services for the operation of municipal business, and zoning, planning and land use services within the Town's corporate limits.

3. The proposed initial, interim governing board members are

- (a) Betty Edmondson, 485 Shellcastle Road, Rocky Mount, North Carolina 27804;
- (b) Kathryn A. Warren, 3598 Carriage Farm Road, Rocky Mount, North Carolina, 27804; and
- (c) Lawrence Alford, 232 Shellcastle Road, Rocky Mount, North Carolina 27804.

4. A copy of a proposed charter for the Town of Oak Level is annexed hereto as Exhibit B.

5. The present, estimated population of the area to be incorporated based on 2000 Census data is 1,772 people, as indicated by the Nash County Planning Department (see Exhibit C). The area of the proposed municipality is about 1,880 acres, and the population density of the proposed municipality is approximately .94 persons per acre. It is estimated that assessed tax values for the area is \$150,000,000, as indicated by the Nash County Tax Department on November 3, 2008 (see annexed Exhibit D). The Nash County Planning Department estimates

that the proposed incorporated area is developed residentially (55%), commercial (less than 10%), and cultural/forest 35% to 40%) (see Exhibit C).

6. The Petitioners propose a mayor-council form of government in accordance with General Statutes Chapter 160A, Article 7, Part 3. Elections shall be on an "at large" basis. The members of the Town Council shall serve staggered terms of four years.

7. In accordance with General Statutes Section 120-163(c), the proposed Town of Oak Level will offer four (4) of the following services no later than the first day of the third fiscal year following the effective date of incorporation:

- (a) Police protection (through Nash County Sheriff – see Exhibit E);
- (b) Fire protection (through contract with Town of Nashville Fire Department);
- (c) Solid waste collection or disposal services (proposed via contractual services – See Exhibit F);
- (d) Water distribution;
- (e) Street maintenance;
- (f) Street construction or right-of-way acquisition;
- (g) Street lighting; or
- (h) Zoning.

8. The proposed Town of Oak Level will have a budget ordinance with an ad valorem tax levy of at least five cents on the \$100 valuation upon all taxable property within its corporate limits.

This the 25th day of November, 2008.

(SEE ATTACHED SIGNATURE PAGES AND NASH COUNTY BOARD OF ELECTIONS
LETTER CONFIGURING QUALIFICATION OF SIGNATURES)

**PROPOSED CHARTER FOR THE
TOWN OF OAK LEVEL**

ARTICLE I. INCORPORATION AND CORPORATE POWERS.

Sec. 1.1 Incorporation.

The citizens of the area described in Chapter II of this Article shall be and constitute a body politic and corporate under the name of "Town of Oak Level", and shall have all the powers, authority, rights, privileges, and immunities conferred upon municipal corporations by the Constitution and general laws of North Carolina.

Sec. 1.2 Powers.

The city shall have all the powers, duties, rights, privileges and immunities now vested in the city and now or hereafter granted to municipal corporations by the Constitution, by the general laws of the State of North Carolina, and by this Charter. The city shall exercise and enjoy all other powers, functions, rights, privileges, and immunities necessary or desirable to promote or protect the safety, health, peace, security, good order, comfort, convenience, and general welfare of the city and of its citizens, unless otherwise prohibited in this Charter.

ARTICLE II. Town Boundaries.

Until changed in accordance with law, the boundaries of the Town of Oak Level consist of the area within the corporate limits on the effective date of its Charter.

Sec. 2.3 Limitation on Annexation for 10 Years.

The Town of Oak Level shall not, for a period of 10 years from the effective date of this charter amendment, involuntarily annex any property.

ARTICLE III. Governing Body

Sec. 3.1. Number of members.

The elective officers of the town shall be a Mayor and town council composed of five members.

Sec. 3.2. Manner of election.

The Mayor shall be elected by and from the qualified voters of the town at large. The town council shall be elected by and from the qualified voters of the town at large.

Sec. 3.3 Results.

- (a) Elections shall be conducted by the Nash County Board of Election, unless provided otherwise.
- (b) The election shall be conducted under the nonpartisan plurality method, and the results determined in accordance with G.S. 163-292.

Sec. 3.4 Term of office.

Terms of Council. Commencing with the general election of Council to be held in November, 2009, the two candidates receiving the most votes shall receive four (4) year terms. The other three prevailing candidates will receive two (2) year terms. In 2011, seats of the candidates who had received two (2) year terms in the 2009 election shall become open, at which time the winners of the 2011 election will be entitled to four (4) year terms.

Terms of Mayor. Commencing with the general election in 2009, the term of the Mayor shall be four (4) years.

(Ord. No. 6-93, § 1, 12-6-93; Ord. No. 11-99, § 1, 12-16-99)

Sec. 3.5 Mayor and Council.

- (a) Except as otherwise provided in this Charter, all powers of the town shall be vested in a council consisting of the members and a mayor nominated and elected from the town at large in the manner hereinafter provided.
- (b) No person shall be eligible to file for, or be elected to the office of mayor or councilman, or to serve as such, unless he is a qualified voter and resident of the town. If any elected mayor or councilman shall cease to reside within the town or shall be convicted of a felony, he shall thereafter be disqualified from serving as mayor or councilman.
- (c) The council shall have the power, on the vote of three-fourths of its members, to remove the mayor or any one of its members for misfeasance, malfeasance, or nonfeasance of office or for conviction of a misdemeanor involving moral turpitude, after a hearing of the matter before the council, at which time the subject of such hearing may be present and represented by counsel. Notice of such hearing shall be served on the subjects thereof at least two weeks in advance of the hearing in person, if possible, and if not, by publication.
- (d) The mayor and each member of the council shall receive a salary, the amount of which shall be prescribed by ordinance. Such salary may be increased or reduced, but no such change shall be made to take effect as

to the mayor or any councilman during the respective term of office which he is serving at the time the change is voted.

- (e) If a councilman is disabled and unable to discharge the duties of his office, the council may choose some qualified person as his successor during his disability. Persons so elected shall have all authority and powers given by and subject to all limitations provided under this Charter, or by law, to regularly elected councilmen.

Sec. 3.6. Organization, Powers and Procedures of the Council.

- (a) The organizational meeting of each incoming council and the mayor shall be held at the time of the first meeting of the council following each annual election, at 7:00 p.m. in the municipal building. Before entering upon the duties of their respective offices, the mayor-elect and the councilman-elect shall severally take oath before a judge of the superior court, court of appeals, supreme court, district court judge, magistrate, or the clerk of the superior court of Nash County to perform faithfully the duties of their respective offices. In the event the mayor-elect or any councilman-elect cannot be present at the organizational meeting, he may take the oath of office at any time thereafter.
- (b) The council shall fix suitable times for its regular meetings, which shall be as often as once monthly. The council may change the time of such regular meetings, and may provide for other meetings, as may be deemed necessary. Special meetings of the council may be called by the mayor when deemed necessary, and shall be called by the town clerk upon the written request of two or more councilmen. All councilmen shall be notified in writing, or otherwise, of all special meetings; and any such notice shall state the subjects to be considered at the special meeting; and no other subjects shall be there considered unless consented by all of the council and mayor. Minutes shall be kept of the proceedings of all regular and special meetings. Any business may be transacted at a special meeting that might be transacted at a regular meeting, provided the notice states the subjects to be considered at the special meeting or unless consented to as set out above. All meetings of the council shall be open to the public, and the rules of the council shall provide that citizens of the town shall have a reasonable opportunity to be heard at any such meetings in regard to any matter considered thereat.
- (c) Except as otherwise specifically provided by the Charter, the council shall have the authority to adopt rules of procedure and generally regulate the manner and method of the exercise of its power. All meetings shall be held within the Town of Oak Level except in the case of an emergency. In the event the council deems it desirable to hold a joint meeting with the governing body of another municipality or political subdivision of the

State of North Carolina, it may at its election, meet with the other governing body at a designated place within Nash County or within the area subject to the jurisdiction of the other governing body.

- (d) In addition to the other powers hereby conferred upon it, the council may adopt and provide for the execution of such ordinances, rules and regulations not inconsistent with the law, as may be necessary or appropriate for the preservation and promotion of the health, safety, comfort, culture, economy, convenience, good order, morals, better government, and general welfare of the town and its inhabitants.

Sec. 3.7 Meetings, Quorums, Votes, Attendance of Commissioners.

- (a) A majority of the members elected to the council shall constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members by ordering them to be taken into custody.
- (b) The affirmative vote of a majority of the members elected to the council shall be necessary to adopt any ordinances, resolutions, order or vote; except that a vote to adjourn, or regarding the attendance of absent members, may be adopted by a majority of the members present. No member shall be excused from voting except on matters involving the consideration of his own official conduct, or when his financial interests are involved.

Sec. 3.8 Ordinances and Resolutions.

- (a) Ordinances and resolutions shall be introduced in the council only in written or printed form. The adoption, amendment, or repeal of ordinances shall be in accordance with the applicable provisions of the general laws of North Carolina not inconsistent with this Charter.
- (b) The "yeas" and "nays" shall be taken upon all ordinances and resolutions and entered upon the minutes of the board. The enacting clause of all ordinances shall be: "Be it ordained by the Council of the Town of Oak Level." All ordinances and resolutions shall take effect upon adoption unless otherwise provided therein, and except as otherwise described in this Charter.
- (c) Upon its final passage, such ordinances or resolutions shall be authenticated by the mayor and the town clerk, and shall be recorded in a book kept for that purpose.

Sec. 3.9 Council to Judge Qualifications.

The council shall be the judge of the election and qualifications of its members and the mayor, and in such cases shall have the power to subpoena witnesses and compel the production of all pertinent books, records and papers; but the decision of the council in any such case shall be subject to review by the courts.

Sec. 3.10 Mayor and Mayor Pro Tem.

- (a) The Mayor shall preside at all meetings of the council and shall have a casting vote in case of an equal division. He shall be recognized as the official head of the town for all ceremonial purposes, and by the courts for the purpose of serving civil process. He shall have the power to administer oaths. He shall exercise such other powers and perform such other duties as are or may be conferred and imposed upon him by the general laws of North Carolina, by this Charter, and the ordinances of the town. In time of public danger or emergency, the mayor shall, if so authorized and directed by vote of the council, take command of the police, maintain order, and enforce the law. In pursuance of resolution by the town council he shall, in the name of the town, execute in its behalf all deeds and contracts.
- (b) At its first regular meeting following a regular municipal election, the council shall choose one of its members as vice-chairman, who shall act as mayor pro tem. In case of the absence or disability of the mayor, the duties of his office shall devolve upon the mayor pro tem; and such mayor pro tem shall, for the time, be clothed with every power conferred by law upon the mayor.

(Sess. Laws 1973, ch. 343).

ARTICLE IV. Administration.

Sec. 4.1 Town to Operate Under Mayor-Council Plan.

The Town of Oak Level shall operate under the Mayor-Council plan as provided in General Statutes Chapter 160A, Article 7, Part 3.

Sec. 4.2 Town Clerk.

The town clerk shall keep the records and minutes of the town council, preserve all books, records, documents, and other articles committed to his use or custody during his term of office and surrender the same to his successor in office. He shall be the custodian of the corporate seal of said town. He shall attest the execution of all deeds or other contracts executed by the mayor on behalf of the town, and affix its corporate seal to all deeds and such contracts

and obligations as it shall be deemed necessary to so attest, and shall perform such other duties as may be prescribed by the Charter, by the council, or by law.

Sec. 4.3 Treasurer.

The treasurer shall have custody of and shall disburse all monies belonging to the town government, subject to the provisions of this Charter and ordinances enacted thereunder. He shall have custody of all investments and invested funds of the town, or in possession of the town in a fiduciary capacity, and shall keep a record of such investments. All notes, bonds, or other evidences of indebtedness of the town shall bear his signature, which when authorized by him in writing, may also be facsimile signatures. He may perform such other duties as may be prescribed by this Charter, by the council, or by law.

Sec. 4.4 Tax Collector.

The tax collector shall collect all taxes, licenses, fees, and other moneys belonging to the town government, subject to the provisions of this Charter and ordinances enacted thereunder. He shall diligently comply with and enforce the general laws of North Carolina relating to the collection, sale and foreclosure of taxes by municipalities. It shall be the duty of the tax collector to deposit daily in the town depository all moneys belonging to the town. He shall perform such other duties as may be prescribed by this Charter, by the council, or by law.

Sec. 4.5 Town Attorney.

- (a) The council shall appoint an attorney or firm of attorneys who shall be duly licensed to practice law in the State of North Carolina.
- (b) He shall serve as legal counsel to the town and all departments and offices thereof in matters relating to their official duties and powers. He shall represent the town in all litigation and controversies, and before all governmental boards and commissions as directed by the council. He shall perform such other duties of a legal nature pertaining to the town as may be directed by the council, or as may be imposed by law upon the chief legal officers of municipalities.
- (c) The council may employ such other attorneys to perform such services as it shall from time to time deem advisable.

ARTICLE V. Taxation

The territory within the corporate limits, and its citizens and property, shall be subject to municipal taxes levied by the Town for the fiscal year 2009-1010 and subsequent years. The town may obtain from Nash County, and the Nash County Tax Supervisor shall provide upon request, a record of property within the corporate limits, which property was listed for taxation as of January 1, 2009.

THE BROUGH LAW FIRM

1829 E. FRANKLIN STREET - SUITE 800-A
CHAPEL HILL, NORTH CAROLINA 27514
TEL (919) 929-3905 • FAX (919) 942-5742

MICHAEL B. BROUGH
WILLIAM C. MORGAN, JR.
G. NICHOLAS HERMAN
ROBERT E. HORNIK, JR.
T.C. MORPHIS, JR.
NANCY FRIEL HORNIK

brough@broughlawfirm.com
morgan@broughlawfirm.com
herman@broughlawfirm.com
hornik@broughlawfirm.com
morphis@broughlawfirm.com
nhornik@broughlawfirm.com

January 12, 2009

Zachary Lee Nichols
Community Development Planner
North Carolina Division of Community Assistance
4313 Mail Service Center
Raleigh, North Carolina 27699-4313

Re: Proposed Town of Oak Level, Nash County, NC; Corrected
Proposed Boundary Map

Dear Lee:

Enclosed herewith please find a copy of the revised, proposed map showing the proposed corporate limits for the Town of Oak Level. Please let me know if you have any further questions.

Very truly yours,

THE BROUGH LAW FIRM

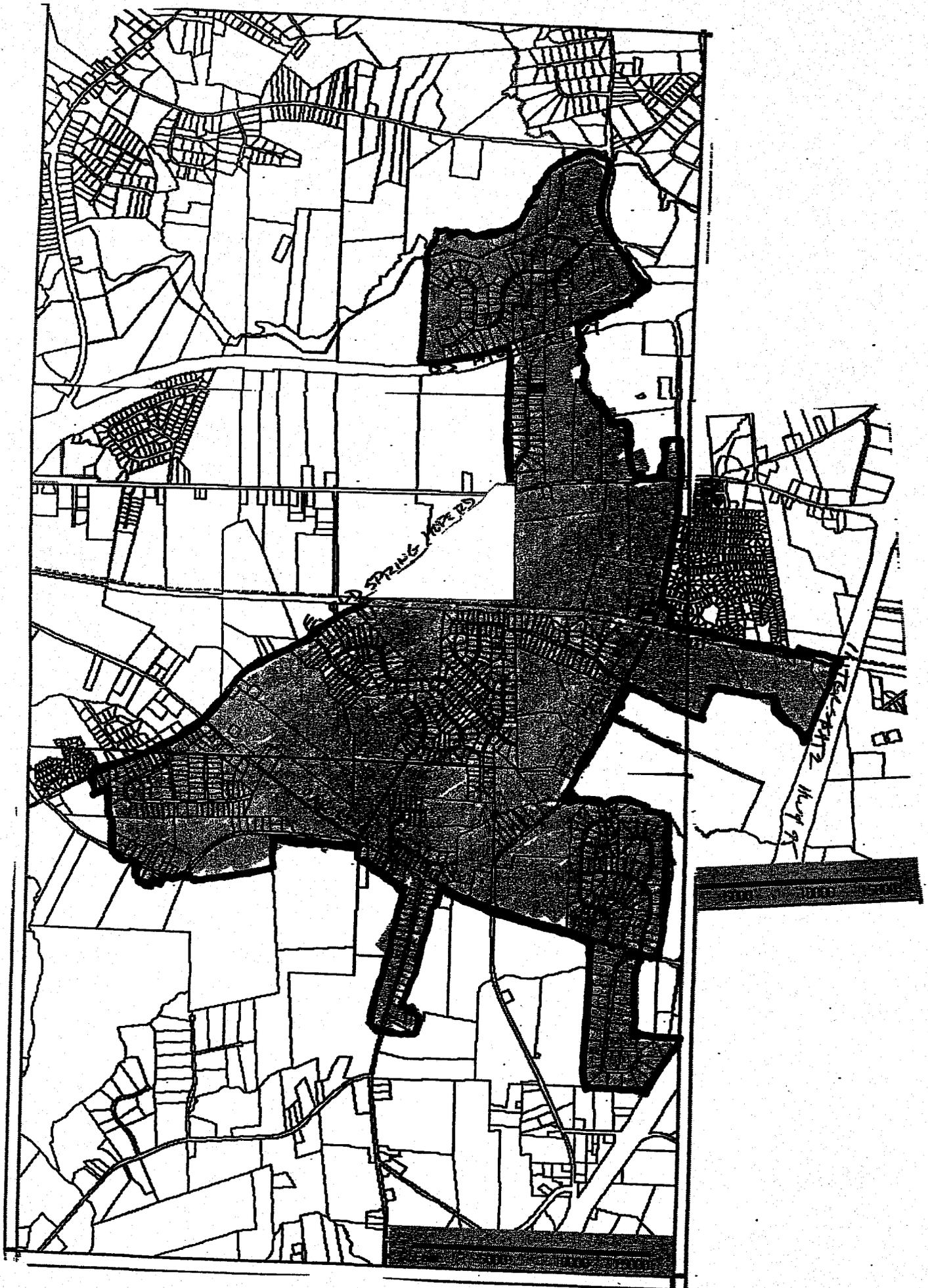


Robert E. Hornik, Jr.

REHjr:las

Enclosure

cc: Ms. Betty Edmondson





NASH COUNTY PLANNING DEPARTMENT

120 West Washington Street – Suite 2110
Nashville, NC 27856
Telephone: (252) 459-9809
Fax: (252) 459-1381

November 6, 2008

Oak Level Community Against Forced Annexation
PO Box 8443
Rocky Mount, NC 27804

RE: Population Data for Oak level Area

To Whom It May Concern:

Per your request, the following information is provided regarding the Oak Level study area in Nash County, which is to be included in the proposed corporate limits for a new municipality. The study area is wholly located in Oak Level Township, located between the City of Rocky Mount and the Town of Nashville. The study area includes only part of the township remainder.

Unless otherwise indicated, the household size data is from the 2000 Decennial Census, STF 1 population files. Housing counts, development estimates and acreage estimates are from the Nash County GIS and tax parcel databases and aerial photography.

Based on the boundaries provided for calculation, Nash County calculated approximately 695 dwellings and a gross area of 2.93 square miles (approximately 1,880 acres) in the study area. The 2000 Census reported the average household size in the Oak Level Township (remainder) as 2.55 persons per household. Applying that to the number of households yield an estimated population for the study area of 1,772 persons and a density of 604 persons per square mile.

Based on acreage estimates from county mapping, development of the study area is estimated as 55% residential, 35-40% agricultural/forested, and under 10% commercial.

Sincerely,

Nancy M. Nixon, AICP
Senior Planner



NASH COUNTY TAX DEPARTMENT

NASH COUNTY ADMINISTRATION BUILDING
120 W. WASHINGTON STREET SUITE 2058
NASHVILLE, NC 27856

TELEPHONES:
COLLECTIONS (252) 459-9824
LISTING (252) 459-9816
MAPPING (252) 459-9838
APPRAISAL (252) 459-9820

November 3, 2008

To Whom It May Concern:

The estimated tax value for the area of the proposed incorporation of the town of Oak Level is \$150,000,000.

A handwritten signature in cursive script, appearing to read "W. Gene Rountree".

W. Gene Rountree
Nash County Tax Administrator

Nash County Sheriff's Office

SHERIFF
DICK JENKINS



P.O. BOX 355
NASHVILLE, N.C. 27856
(252) 459-4121
FAX (252) 459-8741

November 10, 2008

To Whom It May Concern:

If the Oak Level Township is approved, the Nash County Sheriff's Office will continue to provide law enforcement services as we are currently doing.

If we can be of further assistance, please do not hesitate to contact us at any time.

Sincerely,

A handwritten signature in cursive script that reads "Dick Jenkins".

Sheriff Dick Jenkins

**WASTE INDUSTRIES**

PO Box 1831 Wilson, North Carolina 27894-1831
Bus: (252) 293-4474 Fax: (252) 293-4493 www.wasteindustries.com

November 6, 2008

Cathy Warren
3598 Carriage Farm Road
Rocky Mount, North Carolina 27804

Reference: Solid Waste Collection Services in the Proposed Oak Level Incorporated Area

Dear Ms. Warren,

Waste Industries will continue to provide solid waste collection services in the proposed Oak Level Incorporated Area if the State of North Carolina approves the incorporation.

Respectfully,

Norma Yanez
Governmental Contracts Manager

THE BROUGH LAW FIRM

1829 E. FRANKLIN STREET • SUITE 800-A
CHAPEL HILL, NORTH CAROLINA 27514
TEL (919) 929-3905 • FAX (919) 942-5742

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brough@broughlawfirm.com
morgan@broughlawfirm.com
herman@broughlawfirm.com
hornik@broughlawfirm.com
morphis@broughlawfirm.com
ahornik@broughlawfirm.com

November 20, 2008

Hon. J. Claude Mayo, Chairman
Nash County Board of Commissioners
120 W. Washington Street
Nashville, North Carolina 27856

Hon. Kirby B. Brown, Mayor
Town of Dortches
3057 Town Hall Road
Rocky Mount, North Carolina 27804-9186

Hon. Alfred L. Wester, Mayor
Town of Red Oak
Post Office Box A
Red Oak, North Carolina 27868-0016

Hon. David W. Combs, Mayor
City of Rocky Mount
Post Office Box 1180
Rocky Mount, North Carolina 27804-8314

Hon. Donald Streak, Mayor
Town of Nashville
Post Office Box 987
Nashville, North Carolina 27856-0987

Hon. James F. Gwaltney, Mayor
Town of Spring Hope
Post Office Box 87
Spring Hope, North Carolina 27882-0087

Hon. Sheila Williams, Mayor
Town of Sharpsburg
Post Office Box 1759
Sharpsburg, North Carolina 27878-1759

Hon. Luther Harvey Lewis, Jr., Mayor
Town of Middlesex
Post Office Box 69
Middlesex, North Carolina 27557-0069

Re: Petition for Incorporation — Proposed Town of Oak Level,
Nash County, North Carolina

Dear Hon. Mayors, and Chairman of the Nash County Board of Commissioners:

This letter is being sent to you pursuant to North Carolina General Statutes Section 120-164 to advise you that on or about November 28, 2008, a Petition will be filed with the Joint Legislative Commission on Municipal Corporations seeking incorporation of an approximately 1,880 acre area located in Nash County, North Carolina, to be known as the "Town of Oak Level." The proposed area to be incorporated is shaded on the enclosed map. The North Carolina Board of Elections has confirmed that there are an estimated 1,328 registered voters in the area proposed to be incorporated, and that the Petition has been signed by 733 qualified voters. A copy of the Petition will be provided to you upon your request.

Thank you.

Very truly yours,

THE BROUGH LAW FIRM


Robert E. Hornik, Jr.

REHjr:las

cc: Ms. Betty Edmondson

CERTIFICATE OF MAILING

This is to certify that the undersigned has this date served the attached Letter upon all parties to this cause by:

- Hand delivering a copy hereof to the attorney for each said party, or leaving a copy at the office of said attorney with a person in charge thereof.
- Depositing a copy hereof, postage pre-paid, in the United States mail, properly addressed to the attorney for each said party as follows:

Hon. J. Claude Mayo, Chairman
Nash County Board of Commissioners
120 W. Washington Street
Nashville, North Carolina 27856

Hon. Alfred L. Wester, Mayor
Town of Red Oak
Post Office Box A
Red Oak, North Carolina 27868-0016

Hon. Donald Streak, Mayor
Town of Nashville
Post Office Box 987
Nashville, North Carolina 27856-0987

Hon. Kirby B. Brown, Mayor
Town of Dortches
3057 Town Hall Road
Rocky Mount, North Carolina 27804-9186

Hon. David W. Combs, Mayor
City of Rocky Mount
Post Office Box 1180
Rocky Mount, North Carolina 27804-8314

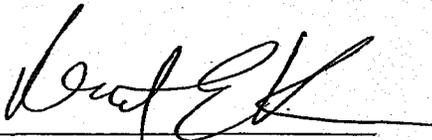
Hon. James F. Gwaltney, Mayor
Town of Spring Hope
Post Office Box 87
Spring Hope, North Carolina 27882-0087

Hon. Luther Harvey Lewis, Jr., Mayor
Town of Middlesex
Post Office Box 69
Middlesex, North Carolina 27557-0069

Hon. Sheila Williams, Mayor
Town of Sharpsburg
Post Office Box 1759
Sharpsburg, North Carolina 27878-1759

This the 20th day of November, 2008.

BY:


Robert E. Hornik, Jr.

THE BROUGH LAW FIRM

1829 E. FRANKLIN STREET • SUITE 800-A
CHAPEL HILL, NORTH CAROLINA 27514
TEL (919) 929-3905 • FAX (919) 942-5747

Rec
1/6/08
DCA

MICHAEL B. BROUGH
WILLIAM C. MORGAN, JR.
G. NICHOLAS HERMAN
ROBERT E. HORNIK, JR.
T.C. MORPHIS, JR.
NANCY FRIEL HORNIK

lawfirm.com
lawfirm.com
lawfirm.com
lawfirm.com
lawfirm.com

January 5, 2009

Hon. Owen Strickland, Mayor
Town of Bailey
Post Office Box 40
Bailey, North Carolina 27807-0040

Hon. Ke
Town of Momeyer
4868 Momeyer Way
Nashville, North Carolina 27856-9091

Hon. Ellene D. Leonard, Mayor
Town of Castalia
Post Office Box 237
Castalia, North Carolina 27816-0237

Hon. Ben Neville, Jr., Mayor
Town of Whitakers
Post Office Box 727
Whitakers, North Carolina 27891

Re: Petition for Incorporation — Proposed Town of Oak Level, Nash County, North Carolina

Dear Honorable Mayors:

This letter is being sent to you pursuant to North Carolina General Statutes Section 120-164 to advise you that on or about November 28, 2008, a petition was filed with the Joint Legislative Commission on Municipal Corporations seeking incorporation of an approximately 1,880 acre area located in Nash County, North Carolina, to be known as the "Town of Oak Level." The proposed area to be incorporated is shaded on the enclosed map. The Nash County Board of Elections has confirmed that there are an estimated 1,328 registered voters in the area proposed to be incorporated, and that the Petition has been signed by 733 qualified voters. A copy of the Petition will be provided to you upon your request.

Thank you.

Very truly yours,

THE BROUGH LAW FIRM



Robert E. Hornik, Jr.

REHjr:las
Enclosure

cc: Betty Edmondson
Z. Lee Nichols

CERTIFICATE OF MAILING

This is to certify that the undersigned has this date served the attached Letter upon all parties to this cause by:

- Hand delivering a copy hereof to the attorney for each said party, or leaving a copy at the office of said attorney with a person in charge thereof.
- Depositing a copy hereof, postage pre-paid, in the United States mail, properly addressed to the attorney for each said party as follows:

Hon. Ellene D. Leonard, Mayor
Town of Castalia
Post Office Box 237
Castalia, North Carolina 27816-0237

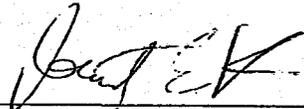
Hon. Kenneth Lee Parker, Mayor
Town of Momeyer
4868 Momeyer Way
Nashville, North Carolina 27856-9091

Hon. Ben Neville, Jr., Mayor
Town of Whitakers
Post Office Box 727
Whitakers, North Carolina 27891

Hon. Owen Strickland, Mayor
Town of Bailey
Post Office Box 40
Bailey, North Carolina 27807-0040

This the 5th day of January, 2009.

BY:



Robert E. Hornik, Jr.

IVY L. ARMSTRONG, Chairman

KEVIN N. LEWIS, Member



JOHN M. KEARNEY, Director

MARGARET M. EARLY, Secretary

NASH COUNTY BOARD OF ELECTIONS

November 19, 2008

Betty Edmondson
485 Shellcastle Rd.
Rocky Mount, NC 27804

Dear Ms. Edmondson:

This letter is to inform you of the status of petition INCORPORATION FOR TOWN OF OAK LEVEL in Nash County. Pursuant to North Carolina law, the entire petition has been checked against the registration records of the Nash County Board of Elections and that 733 names out of 856 signatures have been determined to be qualified. Attached is the list of the names submitted and their status. We have reviewed the map submitted to us which indicates the area to be incorporated and have determined that the area contains an estimated 1,328 registered voters.

Sincerely,

John M. Kearney, Director
Nash County Board of Elections

THE BROUGH LAW FIRM

1829 E. FRANKLIN STREET • SUITE 800-A
CHAPEL HILL, NORTH CAROLINA 27514
TEL (919) 929-3905 • FAX (919) 942-5742

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ROBERT E. HORNIK, JR.
T.C. MORPHIS, JR.
NANCY FRIEL HORNIK

brough@broughlawfirm.com
morgan@broughlawfirm.com
herman@broughlawfirm.com
hornik@broughlawfirm.com
morphis@broughlawfirm.com
nhornik@broughlawfirm.com

January 6, 2009

Zachary Lee Nichols
Community Development Planner
North Carolina Division of Community Assistance
4313 Mail Service Center
Raleigh, North Carolina 27699-4313

Re: **Proposed Incorporation of the Town of Oak Level, Nash County, North Carolina;
Affidavit of Publication of Notice and Map**

Dear Lee:

Enclosed herewith please find a copy of the Publisher's Affidavit indicating that the Rocky Mount Telegram published the Notice and Map concerning the proposed incorporation of the Town of Oak Level on November 21, 2008 and November 24, 2008.

Please let me know if you have any questions.

Very truly yours,

THE BROUGH LAW FIRM



Robert E. Hornik, Jr.

REHjr:las

Enclosure

cc: Ms. Betty Edmondson

Rocky Mount TELEGRAM

Rec
11/2/08
DCA

OAK LEVEL COMMUNITY AGAINST
P O BOX 8443

ROCKY MOUNT, NC 27804

CopyLine: MAP OF PROPOSED AREA
Lines:
Total Price:

PUBLISHER'S AFFIDAVIT

AD ID: 7134183

NORTH CAROLINA
NASH COUNTY:

JUANITA COOPER-FORD affirms that she is clerk of the Rocky Mount Telegram, a newspaper published daily at Rocky Mount, Nash County, North Carolina, and that the advertisement, a true copy of which is hereto attached, entitled MAP OF PROPOSED AREA was published in said the Rocky Mount Telegram on the following dates:

Friday, November 21, 2008 Page: C1
Monday, November 24, 2008 Page: C4

and that the said newspaper in which such notice, paper, document or legal advertisement was published, was at the time of each and every publication, a newspaper meeting all of the requirements and qualifications of Chapter 1, Section 597 of the General Statutes of North Carolina and was a qualified newspaper within the meaning of Chapter 1, Section 597 of the General Statutes of North Carolina.

PLEASE TAKE NOTICE that on or about November 28, 2008, a petition will be filed with the Joint Legislative Commission on Municipal Incorporations seeking to incorporate an approximately 1,800 acre area in Nash County, North Carolina as a new municipal corporation to be known as the "Town of Oak Level." A map of the proposed area is shown below and incorporated herein by reference.



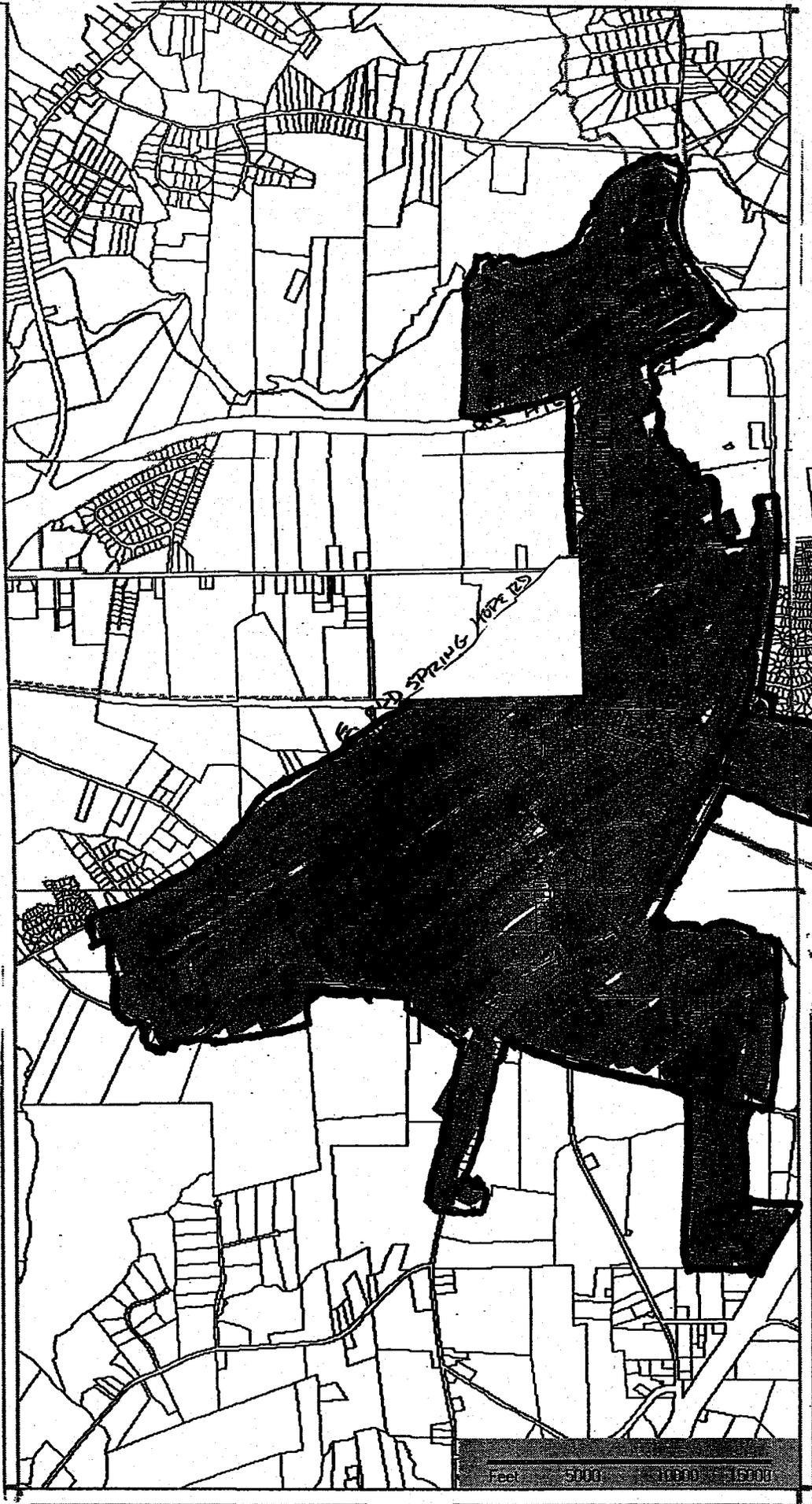
Affirmed and subscribed before me this 24 day
of November 2008

Michelle W. Parker
(Notary Public Signature)

Michelle W. Parker
(Notary Public Printed Name)

MICHELLE W. PARKER
NOTARY PUBLIC
NASH COUNTY
NORTH CAROLINA

My commission expires 11-18-10



W. 2ND SPRING 1072 123

2148-21
Hwy 9

5000 10000 15000

feet 5000 10000 15000

INITIAL REPORT

Assessment of the Petition

By

**The Town of Oak Level
(Nash County)**

For

Incorporation

Relative to NC G.S. 120-163 and NC G.S. 120-164

By

**North Carolina Department of Commerce
Division of Community Assistance**



The Division of Community Assistance staff has reviewed the petition for incorporation from the proposed Town of Oak Level as it relates to NC G.S. 120-163 and NC G.S. 120-164. These sections of the General Statutes refer to the petition and notification requirements. The requirements of these sections have been satisfied as described below.

G.S. 120-163(a) requires that a petition be signed by 15% of the registered voters (but by not less than 25 voters) of the area asking for incorporation. The proposed Town of Oak Level has submitted a petition with the required signatures. According to the letter from the Nash County Board of Elections, 733 of 1,328 (55 percent) registered voters have signed the petition.

G.S. 120-163(b) requires that "the petition must be verified by the county board of elections of the county where the voter is alleged to be registered. The board of elections shall cause to be examined the signature, shall place a check mark beside the name of each signer who is qualified and registered to vote in that county in the area proposed to be incorporated, and shall attach to the petition a certificate stating the number of voters registered in that county in the area proposed to be incorporated, and the total number of registered voters who have been verified. The county board of elections shall return the petition to the person who presented it within 15 working days of receipt." G.S. 120-163(d) requires that the petitioners must present to the Commission the verified petition from the county board of elections. The Nash County Board of Elections has verified the Town of Oak Level petition.

G.S. 120-163(c) requires that the petition must include a number of items. These are:

- A proposed name for the city. The petition of the Town of Oak Level does include a proposed name, "The Town of Oak Level."
- A map of the city. The petition of the Town of Oak Level does include a map.
- A list of at least 4 services to be provided by the proposed municipality by the 3rd fiscal year. The petition of the Town of Oak Level does include a list of 4 proposed services.
- The names of three persons to serve as the interim governing board. The petition of the Town of Oak Level includes the names of three persons to serve as the interim council.
- A proposed charter. The petition of the Town of Oak Level does include a proposed charter.
- A statement of the estimated population and population density. The petition of the Town of Oak Level does include a statement of the estimated population and population density.
- Assessed valuation. The petition of the Town of Oak Level does include a statement on the assessed valuation of property in the area proposed to be incorporated.

- Degree of development. The petition of the Town of Oak Level does include a statement on the degree of development.
- Recommendations as to the form of government and manner of election. The petition of the Town of Oak Level does include recommendations as to the form of government and manner of election.
- Budget ordinance with an ad valorem tax levy of at least \$.05 per \$100.00 valuation. The petition for the Town of Oak Level does include the required statement on tax levy.

According to G.S. 120-163, the proposed municipality may not contain any non-contiguous areas. Based upon the map submitted with the petition, the proposed boundaries of the Town of Oak Level do not contain any non-contiguous areas.

According to G.S. 120-164(a), not later than five days before submitting the petition to the Commission, the petitioners shall notify:

- (1) The board or boards of county commissioners of the county or counties where the proposed municipality is located.
- (2) All cities within that county or counties.
- (3) All cities in any other county that are within five miles of the proposed municipality of the intent to present the petition to the Commission.

The petition includes copies of the notification letters mailed to Nash County, all municipalities within Nash County, (Bailey, Castalia, Dortches, Middlesex, Momeyer, Nashville, Red Oak, Rocky Mount, Sharpsburg, Spring Hope and Whitakers), and all municipalities in any other county that are within five (5) miles of the proposed Town (none). Therefore, all required notification letters were sent.

According to G.S. 120-164(b), the petitioners shall also publish, one per week for two consecutive weeks, with the second publication appearing no later than seven days before submitting the petition to the Commission, notice in a newspaper of general circulation in the area proposed to be incorporated of the intent to present the petition to the Commission.

The notice was published in the Rocky Mount Telegram on November 21, 2008 and November 24, 2008, as evidenced by an affidavit of publication.

PHASE 1 REPORT

Assessment of the Petition

By

**The Town of Oak Level
(Nash County)**

For

Incorporation

Relative to NC G.S. 120-166.

By

**North Carolina Department of Commerce
Division of Community Assistance**



The Division of Community Assistance staff has reviewed the petition for incorporation from Oak Level as it relates to NC G.S. 120-166.1 Subsection (a) of that section establishes criteria based upon the nearness of the proposed new town to existing municipalities and their respective populations. The general statute requires that the population values be in accordance with the most recent decennial federal census or according to the most recent annual estimate of the Office of State Budget and Management if the municipality was incorporated since the return of that census. These relationships are presented in the following table.

Critical Distance	Population of Neighboring Municipality
1 mile	5,000 to 9,999
3 miles	10,000 to 24,999
4 miles	25,000 to 49,999
5 miles	50,000 and over

There are no municipalities within 5 miles of the proposed boundaries of the Town of Oak Level with a population of 50,000 and over. The City of Rocky Mount (population 56,288) is within 4 miles of the proposed boundaries of Oak Level, and therefore does meet the threshold set in G.S. 120-166(a). The Town of Dortches (population 867) is within 3 miles of the proposed boundaries of Oak Level, and therefore does not meet the threshold set in G.S. 120-166(a). The Towns of Red Oak (population 2,950) and Nashville (population 4,791) are within 1 mile of the proposed boundaries of the Town of Oak Level, and therefore do not meet the thresholds set in G.S. 120-166(a).

The proposed Town of Oak Level is not entirely on an island, and therefore subsection (b)(1) does not apply. The proposed Town of Oak Level is not separated by a major river or other natural barriers from nearby municipalities, and therefore subsection (b)(2) does not apply. The petition indicated no evidence that subsection (b)(4) applies (a petition for annexation to a nearby city that was not approved). The proposed Town of Oak Level is located within 4 miles of the City of Rocky Mount (a municipality within the distance and having the population described in G.S. 120-166(a)), and therefore subsection (b)(3) does apply. The City of Rocky Mount has not adopted a resolution expressly approving the incorporation of Oak Level.

The Commission is not precluded from making a positive recommendation on the petition for incorporation of the proposed Town of Oak Level as it relates to G.S. 120-166, subject to the proposed Town obtaining a resolution from the City of Rocky Mount expressing its support of the proposed incorporation.

Methodology and Information Sources:

The proposed boundary of the Town of Oak Level is estimated based on the boundary description and the boundary map presented with the petition. The boundary for existing municipality was determined from the most recent digital data available provided by the Nash County GIS Department. A buffer analysis (an ArcView GIS utility) was performed on the proposed boundary that was presented on the map attached to the petition. The buffer area around Oak Level shows on the attached map, municipalities that are within 1, 3, 4, and 5 miles of the proposed municipality boundary and were calculated using ArcGIS software. The population estimates for the nearby municipalities are based on the most recent (2000) decennial census or most recent estimates (July, 2007) of the NC Office of State Budget and Management, State Demographics web site (<http://demog.state.nc.us/>).

Note: 1

§ 120-166. Additional criteria; nearness to another municipality.

(a) The Commission may not make a positive recommendation if the proposed municipality is located within one mile of a municipality of 5,000 to 9,999, within three miles of a municipality of 10,000 to 24,999, within four miles of a municipality of 25,000 to 49,999, or within five miles of a municipality of 50,000 or over, according to the most recent decennial federal census, or according to the most recent annual estimate of the Office of State Budget and Management if the municipality was incorporated since the return of that census.

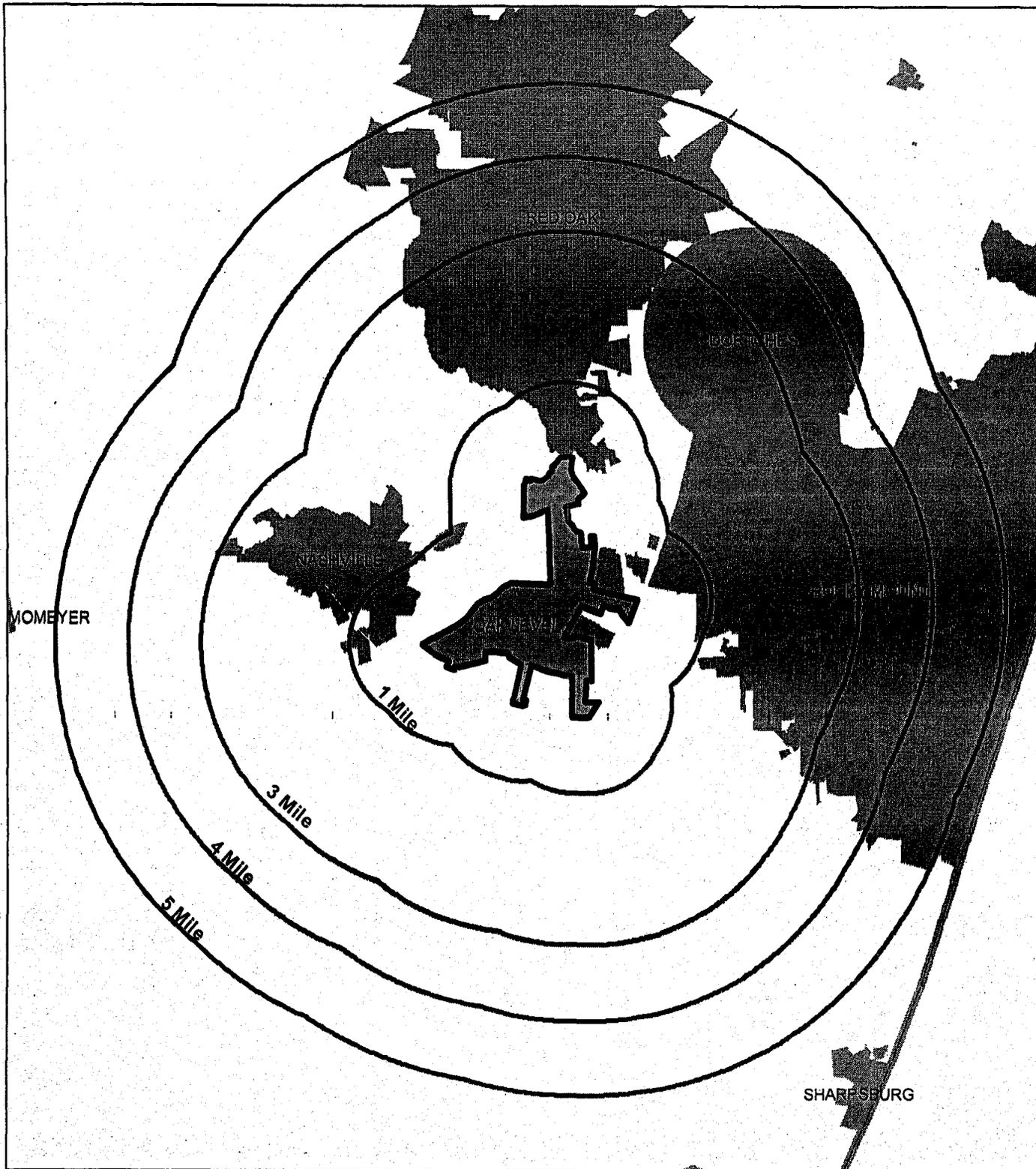
(b) Subsection (a) of this section does not apply in the case of proximity to a specific municipality if:

- (1) The proposed municipality is entirely on an island that the nearby city is not on;
- (2) The proposed municipality is separated by a major river or other natural barrier from the nearby city, such that provision of municipal services by the nearby city to the proposed municipality is infeasible or the cost is prohibitive, and the Commission shall adopt policies to implement this subdivision;
- (3) The nearby municipality by resolution expresses its approval of the incorporation; or
- (4) An area of at least fifty percent (50%) of the proposed municipality has petitioned for annexation to the nearby city under G.S. 160A-31 within the previous 12 months before the incorporation petition is submitted to the Commission but the annexation petition was not approved. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 25.)

OAK LEVEL, NORTH CAROLINA

Incorporation Study

Nearness to Another Municipality



Legend

 NASH COUNTY

 OAK LEVEL

Nearby Municipalities

 DORTCHES

 MOMEYER

 NASHVILLE

 RED OAK

 ROCKY MOUNT

 SHARPSBURG



7,500 3,750 0 7,500 Feet



Prepared 12/30/2008

Source: Map based on digital geographic data provided by the GIS Department of Nash County. Boundary for Oak Level are approximate based on map presented by petitioners and should be used for review purposes only.

